BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOWELL JOINT SCHOOL DISTRICT.	OAH Case No. 2015010269 [Primary]
LOWELL JOINT SCHOOL DISTRICT, v. STUDENT.	OAH Case No. 2015040902 ORDER FOLLOWING PREHEARING CONFERENCE; CONSOLIDATING CASES AND SETTING DUE PROCESS HEARING

On April 24, 2015, a telephonic prehearing conference was held before Administrative Law Judge Marian H. Tully, Office of Administrative Hearings. Attorneys Patricia R. Valenzuela and Lauren-Ashley Caron appeared on behalf of Student. Attorney Adam J. Newman appeared on behalf of Lowell Joint School District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Consolidation. On April 23, 2015, District filed a due process request in OAH case number 2015040902 (District's Case) concurrently with a motion to consolidate District's Case with case number 2015010269 (Student's Case). The parties stipulated to consolidate District's Case with Student's Case and to proceed on the dates set for Student's Case. The two cases involve common questions of law and fact and consolidation furthers the interests of judicial economy by saving time and preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a).) All dates previously set in District's Case are vacated. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in Student's Case.

2. Hearing Dates, Times, and Location. The hearing shall take place on May 5, 6, and 7, 2015 and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on the first day and at 9:00 a.m. all other days unless otherwise ordered.

The hearing shall take place at District's offices located at 11019 Valley Home Avenue, Whittier, California, 90603. District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issues and Proposed Resolutions. The issues are:

Student's Case

(a) Did District deny Student a free appropriate public education for the 2014-2015 school year by failing to complete assessments in the areas of academic achievement, intellectual development, language/speech communication, motor development, social/emotional development, and behavior and to convene an IEP team meeting within 60 days of Parent's consent to a February 2014 Assessment Plan?

(b) Did District deny Student a free appropriate public education for the 2014-2015 school year by failing to complete an occupational therapy assessment and to convene an IEP team meeting within 60 days of Parent's consent to a May 2014 Assessment Plan?

Student's proposed resolutions include, among other things, independent educational evaluations in the areas of academic achievement, intellectual development, language/speech communication, motor development, social/emotional development, behavior and occupational therapy.

District's Case

(c) Were the January 16, 2015 multidisciplinary evaluation; January 6, 2015 occupational therapy evaluation; and January 9, 2015 adaptive physical education assessment appropriate such that such that Student is not entitled to independent educational evaluation(s) at public expense?

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), due to the consolidation, the parties stipulated to exchange binders

by 5:00 p.m., on April 30, 2015. At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind the ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties shall meet and confer on or before May 1, 2015, as to the availability of witnesses and to agree upon a witnesses for the first and second day of the due process hearing. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take. District shall have witnesses available in case agreement on a witness list is not reached.

The parties shall exchange, and provide the ALJ a copy, of resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

6. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need appear and testify only once.

7. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party

seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the witness testify via a landline from a private location and that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled. Neither party requested telephonic testimony from any witness at the PHC.

8. Timely Disclosure of Witnesses/Exhibits. The parties timely disclosed witness and exhibit lists in Student's Case. In light of the consolidation of the two cases, each party may file and serve an amended witness list and/or an amended exhibit list for the consolidated cases by 5:00 p.m., April 30, 2015.

9. Order of Presentation of Evidence. As petitioner in the primary case, Student shall proceed first.

10. Motions. Student's request to exclude witnesses from the hearing room is granted. Student's request to exclude District representative(s) on the grounds that the representative(s) might be called to testify is denied.

Student requested permission to make a personal audio recording for counsels' use to prepare for hearing and closing argument, and as an accommodation for Attorney Caron based upon the laws governing accessibility of government facilities to persons with disabilities. District objected. The request is granted. The sole and official record of the hearing is the OAH recording during the hearing. Each party may make a personal audio recording for counsel's use in representing their party. Such use does not include using or playing the recording in preparing a witness to testify. The recording device will be turned on and off at the same time the ALJ goes on and off the record in order to avoid recording off the record conversations. Operation of a party's recording device will not be allowed to delay the hearing. No delays will be allowed to facilitate personal recording.

No other pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of April 27, 2015.

11. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

12. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off

or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

13. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

14. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880**,** the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

15. Hearing is Closed to the Public.

16. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request

for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

17. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: April 23, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings